Supreme Court, U.S.
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No. 95-266

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

CARRIE JAFFE, as Special Administrator
for RICKY ALLEN, SR.,

Petitioner,

v.

MARY LU REDMOND and VILLAGE OF
HOFFMAN ESTATES, ILLINOIS,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

BRIEF OF *AMICUS CURIAE* NATIONAL
ASSOCIATION OF POLICE ORGANIZATIONS, INC.
IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST OF THE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS

Amicus Curiae the National Association of Police Organizations, Inc. (hereinafter "NAPO") submits this brief in support of Respondents Mary Lu Redmond and the Village of Hoffman Estates, Illinois's arguments for affirmance of the judgement in this case of the United States Court of Appeals for the Seventh Circuit which reversed the original trial verdicts against Respondents and remanded their cause for a new trial.

NAPO is a nationwide association of labor and trade organizations representing state, local and federal law enforcement officers. Among other entities, NAPO represents the Illinois Police Association and the Policemen's Benevolent and Protective Association of Illinois. NAPO represents law enforcement officers throughout the state of Illinois, the territory of the Seventh Circuit, and the United States. Through its state and local affiliates, NAPO actively represents approximately 185,000 sworn law enforcement officers throughout the country. In 1994, NAPO founded the National Law Enforcement Officers' Rights Center, which advocates the necessity of assuring fundamental due process rights for law enforcement officers in the face of increasing political pressures for the investigation and prosecution, both civil and criminal, of police.

NAPO has an important interest in this matter, as the case presents issues the resolution of which will define the extent to which law enforcement officers throughout the United

States may seek out and rely upon the assistance of mental health professionals to cope with and function under the extraordinary stresses of modern police work. With the possible exception of having one's partner murdered, being forced to take the life of another, albeit justified, constitutes the very nadir of psychic trauma in police work. A clear enunciation of the scope and type of counseling which may be provided as a practical matter to officers in this situation is of tremendous importance to the constituent members of NAPO.

NAPO has received the written consent of Petitioner Jaffee and of Respondents Mary Lu Redmond and the Village of Hoffman Estates, Illinois to the filing of this brief as required by Rule 37.3 (a) of the Rules of this Court. The original copies of all consents have been filed with the Clerk of the Court as required by that Rule.

SUMMARY OF ARGUMENT

The men and women who serve our society as law enforcement officers are today exposed to extremes of violence, human misery, depravity, poverty and suffering of innocents unimaginable to most persons and which were for the most part foreign to police work as it was even 30 years ago. With the possible exception of combat veterans, today's police officer sees, and feels, and hears and smells more carnage and trauma than any other professional. As with combat veterans, it is becoming increasingly clear that the psychic injuries sustained in the course of such an occupation can and often are more debilitating than merely physical ones. This is particularly true when, as in the case at bar, an officer who swore to protect life and property is forced by circumstance and the actions of another to take the life of another human being.

In the aftermath of such a profoundly traumatic experience, it is to be expected that the officer involved will be in dire need of assistance. If the officer is to continue to function as a person, let alone return to her duties, then counseling with a professional mental health caregiver becomes crucial. Appropriate, timely psychic care can not only ease the mental anguish of the officer involved; it can also salvage and secure to the public the services of an experienced and highly-trained law enforcement officer. The days of a culture of *machismo* relegating officers to the solitary and illusory comfort of a bottle in an effort to cope with their psychic pain are thankfully gone. Officers, police associations and employers alike are becoming increasingly aware of the value of police seeking mental health counseling when they

need it. Effective counseling of traumatized law enforcement officers is of undeniable benefit to the officers themselves, their departments, their families and of course to the public they serve.

To be effective, however, such counseling must be perceived to be, and be in fact confidential. "Confidentiality" in this context includes the ability of an officer (and the obligation of a mental health professional) to assert a claim of privilege regarding the contents of counseling sessions and therapeutic discussions. Such a claim deserves to be looked on favorably by the Courts of the United States "in the light of reason and experience." Fed. R. Evid. 501.

ARGUMENT

I. THE PRACTICAL AVAILABILITY OF PROFESSIONAL MENTAL HEALTH COUNSELING HAS BECOME ESSENTIAL IN MODERN POLICE WORK.

"An American law enforcement officer encounters more human tragedy in the first three years of his career than most of us see in a lifetime." E. Scrivner, *Psychological Reactions to the Use of Deadly Force,* Nat'l Sheriff Mag., Feb./Mar. 1985.

Police work embraces that which is most noble about

the human condition. It extols service to others; it values protection for the weak; it commits itself to justice and it rewards bravery and sacrifice. At the same time, however, that we demand that our police officers follow these lofty ideals, they often serve in the very abyss of human cruelty and depravity. No one knows better than a police officer the evil that men can do. The extent of man's capacity to do wrong is such that even a veteran of police work can be shocked by what he or she sometimes sees. And hears. And touches. Yet however strong the feeling of repulsion, however great the urge to flee or to ignore, the officer has sworn an oath to do his or her duty.

It is the officer who must try to revive the obviously dead infant. It is the officer who must deliver the terrible news that a spouse has been killed. It is the officer who crawls into the canal to pull out the grotesquely disfigured body. It is the officer who holds and tries in vain to comfort the violated child. It is the officer who is so often despised by others simply because of the job he or she does. It is the officer who sacrifices so much of family life and relationships for "the Job". It is the officer who is so frequently the target of violence even unto death. And it is sometimes the officer who, as here, is forced by circumstance and the violent acts of another to take a human life in order to save another, innocent one.

The taking of a life runs so fundamentally counter to everything most people believe that it will be avoided even by combat soldiers if at all possible. D. Grossman, *On Killing* (1995). For a police officer who is forced, against her nature, to kill another, the event is searingly traumatic:

Police officers drill for that split second when they shoot to kill to protect their own life or the lives around them. True, police officers live through that split second, but they carry their wounds on the inside. The officers who have been there say that the dead never let them go. The officer "swears he saw the bullet leave the gun, even though he knows nobody really can . . . 'I saw his shirttail fly up when the bullet went through him. He was going down and I swear he was getting bigger. It's amazing: After all these years it's difficult to talk about. You know that you've killed someone. You think, My God! You want him to stop. To drop the knife. I could actually see the trajectory of the bullet. I've shot millions of rounds and never seen one before. It's a physical and psychological phenomenon that cops go through when they shoot." . . .[¶] An officer responding as backup to a disturbance call in an apartment building fatally shot a suspect who lunged at a fellow officer with a knife. The shooting officer, now a sergeant, reported that she often relives the incident: "You get into that morality play with yourself -- It's not my job to take somebody's life -- but then you tell yourself 'But I had to do it.' "

L. Petrillo, *Officers Carry Their Wounds on the Inside*, San Diego Union, Dec. 21, 1990, at A-10.

In their comprehensive survey of the extant literature on

police use of deadly force, *Deadly Force: What We Know*, (1992), William A. Geller and Michael S. Scott report:

> Police psychologists and psychiatrists have identified a variety of post-shooting traumatic responses that police officers around the nation have experienced. For example, Russell and Beigel (1990: 368-373) have identified the following stressful reactions among officers who have shot someone:
>
> 1. *Sensory distortion.* Time slows down; everything happens in slow motion.
> 2. *Flashbacks.* Many things subsequently occur that instantly remind you [sic] of the shooting -- another shooting, the sight of a body in the street. You live it over and over.
> 3. *Fear of insanity.* Officers may have this fear because of symptoms in (1) and (2) above.
> 4. *Sorrow over depriving a person of life.* It is very difficult to break the cultural and religious prohibition against killing. Even police officers who have previously killed in military combat state that a police shooting is entirely different. [As one officer put it], 'In a war, that's what you're there for . . . to wipe them out. Police work isn't like that. You are certainly not on a search and destroy mission' (Cohen 1980).
> 5. *Crying.* This usually happens outside the police environment because the macho image does not permit tears.
> 6. *Grasping for life.* Officers become very concerned about their families, their home life,

concerned about their families, their home life, being loved and accepted by others -- a sort of guilt reaction to the shooting.

7. *Nightmares.* One officer reported frequent nightmares in which the suspect kept coming at him, looming ever larger and ever nearer while the officer frantically pumps bullets into the _____ apparition.

8. *A heightened sense of danger.* A shooting brings many officers face to face with their own mortality. No longer can they maintain the idea that 'It won't happen to me.' For some officers this has resulted in their leaving law enforcement [see, e g., *New York Times*, Aug. 19, 1992, at A13; Ford and Malnic (1992)]. Although exact statistics are not available, it has been reported that between 50 and 80 percent of officers involved in shootings have left police work (Baruth 1986: 307).

9. *Anger and hate toward the victim/suspect.* Solomon and Horn (1986) state that this is the second most frequent and severe post-shooting reaction. Officers curse the victim/suspect for 'making them do it,' but this anger may mask the feelings of fear and vulnerability that the incident aroused in officers so that the curse more properly may be expressed as 'goddamn you for making me feel so vulnerable.'

10. *Isolation/withdrawal.* Officers may think that no one will understand what they are going through. They don't want to risk being ridiculed or put down. Peer support from

shooting experience can be most helpful at this time.

11. *Fear and anxiety about the next time it happens.* One officer who shot a suspect who[m] he thought was armed (he wasn't) expressed fears that the 'next time maybe I'll hesitate to shoot and this time the a_____ will have a gun and he'll blow my [expletive deleted] head off.'

12. *Fear that they will be fired, criminally charged, or sued in civil court.* These are frequent reactions. Police policies and procedures may add unnecessary stresses to officers involved in a shooting. Delays in completing the investigation, a negative attitude, or lack of support from supervisors and/or administration can compound the psychological damage. [Investigations that last several months, even if they clear the involved officer of any wrongdoing, have disrupted families, producing stresses that led to divorce. Civil and criminal court proceedings against officers for shootings] *make psychological intervention more difficult because officers become preoccupied with the legal ramifications of what they say to the psychologist rather than trying to express feelings about the shooting . . .* [emphasis added]

Solomon and Horn (1986) prepared a similar list of 18 distinct types of reactions that officers

> they interviewed had to the trauma of shooting someone. As summarized by Ayers and Flanagan (1990: 7-8), these reactions included: "heightened sense of danger, anger, nightmares, isolation/withdrawal, fear and anxiety about future situations, sleep difficulties, flashbacks/intruding thoughts, emotional numbing, depression, alienation, guilt/sorrow/remorse, the 'Mark of Cain' (an assumption that others blame or shame them), problems with authority figures/rules/regulations, family problems, feelings of insecurity/loss of control, sexual difficulties, alcohol/drug abuse, and suicidal thoughts."

Geller & Scott, *supra*, at 289-290.

Compounding the degree of traumatic psychic injury done to the officer involved in a shooting is the great degree of difficulty encountered in discussing the event with fellow officers or even intimates.

> Some officers involved in shootouts state that they hated all the adulation they received from their fellow officers afterward. One officer says: "You can't really talk to someone who hasn't been there. They want to hear the gory details, not about your problems handling it because it's heavy and it reminds them that it could happen to them." [citation omitted]

H. Russell & A. Beigel, *Understanding Human Behavior for Effective Police Work*, 368-369 (3d. rev. ed. 1990). Similarly, "The stress of the job is so bad sometimes, [one officer] said, that he stays an extra hour at work, just to cool down, before going home. 'A lot of times, I don't tell my wife everything, the most dangerous parts,' he said." P. Reardon & M. O'Connor, *Police Tactical Teams Tempt the Fates Daily*, Chicago Tribune, Jan. 9, 1991, at 1-2.

The consequences of trauma-induced officer stress being bottled up inside a person are tragic: "Post-traumatic stress disorder . . . has inhibited the productivity of officers, led to early retirement, divorces and even suicides of officers involved in a single shooting incident." Geller & Scott, *Deadly Force*, *supra*, at 75. "For cops, the risk of being killed in the line of duty, scary though it can be, is dwarfed by the risk of what . . . Karl Menninger calls 'death by inches': burnout, alcoholism, divorce, suicide . . . Seventy percent of officers involved in shootings leave police work within five years, mostly because they can't handle the emotional fallout [citations omitted]. *Id.* at 237.

The best hope for officers is that, where it is afforded to those who have experienced traumatic incidents, professional mental health counseling does indeed work to sooth the anguished minds of officers, and salvage to the public a valuable member of society. In a comparative study of the traumatic effects upon rescuers (including police officers) of responding to a major commercial aircraft disaster, researchers looked at the results of two different crashes in San Diego and Cerritos, California. The 1978 San Diego crash killed 125 persons. The 1986 Cerritos crash killed 82 persons. In both

cases 15 persons were killed on the ground. In both cases 16 homes were destroyed. In both cases no one survived on the aircraft. In both cases approximately 300 emergency personnel were engaged in a largely futile rescue effort. In both cases emergency personnel were tasked with recovering more than 10.000 individual body parts.

"The San Diego crash had limited and sporadic psychological briefings for those that responded to the crash site. The Cerritos crash had twelve support teams working. All the police, firefighter and emergency service workers were seen by a team within three days of the crash. They were taken away from the site and had intense follow-up for six months. In addition, there was a hotline installed so that first responders could call 24 hours a day." Am. Police Beat, July/Aug., 1995, at 20. One year later, San Diego, reporting a 1% use of departmental mental health services, saw a total of 5 police, 7 firefighters and 17 rescue workers quit. Cerritos, by way of contrast, reported that 31% of workers used the departmental mental health services provided, and saw only 1 police officer, 1 firefighter and 1 rescue worker depart. *Id.*

The Federal Bureau of Investigation (F.B.I.) has also published findings emphasizing the necessity for early psychological intervention in officer-involved shooting situations. A 1986 F.B.I. study of post-traumatic shooting reactions recommended treatment components for officers involved in a line-of-duty shooting and included the following: " . . . Provide physical *and mental* first aid . . . Provide a psychological break for the officer before the detailed interview . . . Provide *mandatory counseling* within one to two days." T. H. Blau, *Psychological Services for Law*

Enforcement 179 (1994) [emphasis added].

Amicus curiae the National Association of Police Organizations, Inc. submits that the practical availability of effective professional mental health counseling for America's police officers is essential to modern police work and individual as well as departmental police wellbeing. It thus is of crucial importance to the public, which increasingly relies so heavily on our police.

II. ASSURED CONFIDENTIALITY IS ESSENTIAL TO EFFECTIVE COUNSELING.

Other organizations filing briefs *amicus curiae* in this matter possess greater institutional expertise with which to address the issue of confidentiality as an essential therapeutic requirement for the successful mental health counseling of any given individual who has encountered traumatic and traumatizing circumstances. The National Association of Police Organizations, however, does wish to briefly address the particular concerns of police officers with respect to professional mental health counseling following a traumatic incident.

As discussed in Argument I above, the desirability of providing and encouraging use of professional mental health counseling services to police officers is clear. But a notion that is implicit in the recognition of this desirability is that what is desired is *effective* counseling *for police*.

It has been recognized that confidentiality within the mental health professional-client relationship is an important contributing factor to the efficacy of that relationship. "[C]onfidentiality and privilege laws appear to create a shield of privacy around the psychologist [and psychotherapist]-patient relationship which increases the self-disclosure of patients in therapy and also encourages persons to seek psychotherapy." S. Knapp & L. VandeCreek, *Privileged Communications for Psychotherapists in Federal Courts*, 6(2) Psychotherapy in Pvt. Prac. 69 (1988). Psychiatric patients in treatment have been found to value confidentiality highly and to be concerned about the possibility of unauthorized disclosures. D. Schmid, P. Appelbaum, L. Roth & C. Lidz, *Confidentiality in Psychiatry: A Study of the Patient's View*, 34(4) Hospital and Community Psychiatry 353 (1983). Aside from the subjective view of patients, a recent sampling of judges, therapists, and laypersons (as well as patients) in both the United States and Canada found that a lack of a psychotherapist-patient communication privilege reduced the willingness of patients to discuss certain issues in therapy. D. Shuman, M. Weiner & G. Pinard, *The Privilege Study (Part III)*, 9 Int'l J. of L. & Psychiatry 393 (1986). The utilitarianism of confidentiality in the therapeutic setting has been found to be equally important to both inpatient and outpatient clients. P. Appelbaum, Kapen, Walters, C. Lidz & L. Roth, *Confidentiality: An Empirical Test of the Utilitarian Perspective*, 12(2) Bull. of the Am. Acad. of Psychiatry & the L. 109 (1984).

The common-sense notion that reluctance to frankly discuss one's intimate thoughts about an occurrence impedes the "subtle process of therapy" regarding that occurrence has

been persuasively argued. P. Appelbaum, *What Patients Don't Tell Their Therapists*, 2 Integrative Psychiatry 35 (1984). So, too, has been the justification on moral grounds of a legally cognizable psychotherapist-patient privilege since it is morally appropriate to shield the confidences of people in anguish. *Id.*

In police work, the normal patient concerns regarding confidentiality are greatly magnified by the nature of the work. Police officers in general serve in a rigidly administered para-military organization. They are subject to extensive and continuing review of almost every aspect of their personal and professional lives. In a democracy such as ours, there exists a fundamental suspicion of those empowered to execute the dictates of the law, by force if necessary. Following a critical incident such as the use of deadly force against another human being, the level of intrusive and suspicious scrutiny only increases. Homicide detectives, internal affairs investigators, state and federal prosecutors, civil attorneys and the media can be expected to probe every aspect of the officer's conduct, both past and present. A diminishing but still present attitude on the part of some supervisory personnel is that asking for help (especially psychotherapeutic counseling) is a sign of weakness or instability on the part of the officer. "A police executive whose words or deeds make it clear that employees who admit any weakness will be considered unfit for duty and penalized in subtle or not so subtle ways should not be surprised when few employees step forward to seek help." W. Geller & M. Scott, *Deadly Force: What We Know*, 289 (1992). In this context, it is understandable that officers would be reluctant to seek professional mental health assistance if they believed their confidences might one day be revealed.

More progressive and enlightened police departments, like the one serving Respondent Village of Hoffman Estates, have addressed the dual concerns of the necessity for counseling for officers who have been involved in a use-of-deadly-force incident and the need for confidentiality if that counseling is to be effective by instituting routine referral of officers to licensed mental health professionals. By making the referral routine, much of the stigma formerly associated with seeking help is removed. The need for counseling is satisfied; and in the present case, assurances of confidentiality under Illinois law promote the efficacy of the counseling sessions. Illinois Mental Health and Developmental Disabilities Confidentiality Act, Ill. Ann. Stat. Ch. 91 1/2, § 810(a) (Smith-Hurd 1993).

Such far-sighted assistance to police officers is enthusiastically supported by police officers' associations, and makes good business sense to the employing agencies. Previously an officer troubled by a traumatic incident might simply be shunned or quietly eased out of the department. S. Baltic, *Be Careful Out There*, Reader: Chicago's Free Weekly, Nov. 22, 1991, at 29. The more accurate and intelligent approach, both pragmatically and morally, is to affirmatively assist the officer involved. It has been no small leap institutionally for police departments to acknowledge that their officers will frequently experience events that would gravely trouble any sentient being. Counseling the officer involved not only serves the moral goal of alleviating suffering; it also salvages and puts to good public use the knowledge, experience and training invested in a veteran police officer. Gradually, but perceptibly, post-critical incident counseling for police has come to be accepted as a "workable and important

method for reducing the career risks confronting police officers." W. Geller & M. Scott, *Deadly Force, supra*, at 339-40. *Accord*, W. Geller, *Officer Restraint in the Use of Deadly Force*, 13 J. of Police Sci. & Admin. 153 (1985), W. Geller, *Crime File: Deadly Force: A Study Guide* (1986), K. Matulia, *A Balance of Forces: Model Deadly Force Policy and Procedure* (2d. rev. ed. 1985).

Given the extraordinary pressures and stresses of modern police work, and the potential for loss, both personal and public, inherent in forcing officers to "go it alone", the demonstrated need for confidentiality in counseling may well be more crucial in assisting and salvaging patients who happen to be law enforcement officers than for any other cognizable group of patients. In any event, the treatment by United States Courts of psychotherapist-patient communications as privileged is clearly called for not just "in light of reason and experience", but by the strongest moral, practical, pragmatic and compassionate terms.

CONCLUSION

For the foregoing reasons, *amicus curiae* the National Association of Police Organizations, Inc. respectfully requests that the Court affirm the judgement in this case of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted this 2nd day of January, 1996,

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